



Billing Code 3129-04

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 810

RIN 3225-AA00

Community Supervision: Administrative Sanctions and GPS Monitoring as a Supervision Tool

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Proposed rule.

SUMMARY: In this document, the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) is proposing to amend its current rule regarding the conditions of release requirements for offenders under CSOSA supervision. In addition, CSOSA will expand the language of the regulation to detail and provide notice of when CSOSA Community Supervision Officers will use electronic monitoring as a tool to assist in supervision.

DATES: Comments must be submitted [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Address all comments concerning this proposed rule to the Office of General Counsel, CSOSA, 13<sup>th</sup> Floor, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Stephanie Carrigg, Assistant General Counsel, at (202) 220-5352 or by email at [stephanie.carrigg@csosa.gov](mailto:stephanie.carrigg@csosa.gov). Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: The Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) is proposing to amend its regulations concerning the conditions of release requirements for offenders under CSOSA supervision. Specifically, these regulations pertain to the conditions of release that are imposed on an offender when under CSOSA supervision; specifically, the requirement to maintain a certain frequency of face-to-face contact with one's community supervision officer, and the conditions of release that are articulated in the accountability contract that the offender signs with CSOSA. These regulations also detail the consequences that an offender may face for violating the conditions of his or her supervision.

With this amendment, CSOSA will revise the language to reflect that the regulations apply to probationers as well as parolees, and to offenders who are under supervised release. In addition, CSOSA will expand the language of the regulation to detail and provide notice of when CSOSA Community Supervision Officers will use electronic monitoring as a tool to assist in supervision. Currently, the regulations only reference electronic monitoring as an administrative sanction for an offender who has violated the general or specific conditions of release or who has engaged in criminal activity. The amended language will specify the circumstances under which electronic monitoring is used as a supervision tool, including but not limited to: instances when CSOSA's Community Supervision Services (CSS) Division issues directives to place offenders who fit a certain criminal behavioral pattern on electronic monitoring; and instances when CSS makes an individualized determination to place an offender on electronic monitoring based on an offender's noncompliance with the conditions of his supervised release or for other extenuating circumstances.

## Matters of Regulatory Procedure

### Administrative Procedure Act

CSOSA is publishing the proposed rule for notice and comment as required by 5 U.S.C. 553(b) (3) (B) .

### Executive Order 12866

CSOSA has determined that the proposed rule is not a significant rule within the meaning of Executive Order 12866.

### Executive Order 13132

The proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

### Regulatory Flexibility Act

The proposed rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b) .

### Unfunded Mandates Reform Act of 1995

The proposed rule will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

### Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E-Congressional Review Act)

The proposed rule is not a "major rule" as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E-

Congressional Review Act), now codified at 5 U.S.C. 804(2). The rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term "rule" as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

AUTHORITY: D.C. Code 24-1233(b) (2) (B) .

List of Subjects in 28 CFR Part 810

Probation and parole.

For the reasons set forth in the preamble, CSOSA proposes to revise 28 CFR part 810 to read as follows:

Part 810 - Community Supervision: Administrative Sanctions and GPS

Monitoring as a Supervision Tool

Sec.

810.1 Supervision contact requirements.

810.2 Accountability contract.

810.3 Consequences of violating the conditions of supervision.

810.4 Community supervision: Global Position System monitoring.

Authority: Pub. L. 105-33, 111 Stat. 712 (D.C. Code 24-1233(b) (2) (B)) .

#### **§810.1 Supervision contact requirements.**

If you are an offender under supervision by the Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA"), CSOSA will establish a supervision level for you and your minimum contact requirement

(that is, the minimum frequency of face-to-face interactions between you and a Community Supervision Officer ("CSO")).

**§810.2 Accountability contract.**

(a) Your CSO will instruct you to acknowledge your responsibilities and obligations of being under supervision (whether through probation, parole, or supervised release as granted by the releasing authority) by agreeing to an accountability contract with CSOSA.

(b) The CSO is responsible for monitoring your compliance with the conditions of supervision. The accountability contract identifies the following specific activities constituting substance abuse or non-criminal violations of your conditions of supervision. The activities that constitute violations include, but are not limited to, the activities listed in paragraphs (b) (1) and (2) of this section.

(1) *Substance abuse violations.* (i) Having a positive drug test.

(ii) Failing to report for drug testing.

(iii) Failing to appear for treatment sessions.

(iv) Failing to complete inpatient/outpatient treatment programming.

(2) *Non-criminal violations.* (i) Failing to report to the CSO.

(ii) Leaving the judicial district without the permission of the CSO.

(iii) Failing to work regularly or attend training and/or school.

(iv) Failing to notify the CSO of a change of address and/or employment.

(v) Frequenting places where controlled substances are illegally sold, used, distributed, or administered.

(vi) Associating with persons engaged in criminal activity.

(vii) Associating with a person convicted of a felony without the permission of the CSO.

(viii) Failing to notify the CSO within 48 hours of being arrested or questioned by a law enforcement officer.

(ix) Entering into an agreement to act as an informer or act in a confidential relationship with a law enforcement agency without the permission of the releasing authority.

(x) Failing to adhere to any general or special condition of release.

(c) The accountability contract will identify a schedule of administrative sanctions (see §810.3(b)) that may be imposed for your first violation and for subsequent violations.

(d) The accountability contract will provide for positive reinforcements for compliant behavior.

### **§810.3 Consequences of violating the conditions of supervision.**

(a) If your CSO has reason to believe that you are failing to abide by the general or specific conditions of release or you are engaging in criminal activity, you will be in violation of the conditions of your supervision. Your CSO may then impose administrative sanctions (see paragraph (b) of this section) and/or request a hearing by the releasing authority. This hearing may result in the revocation of your release or changes to the conditions of your release.

(b) Administrative sanctions available to the CSO include, but are not limited to:

- (1) Agency or releasing authority reprimand (oral or written)
- (2) Daily check-in with Agency supervision for a specified period of time;
- (3) Increased group activities for a specified period of time;
- (4) Increased drug testing;
- (5) Increased supervision contact requirements;
- (6) Referral for substance abuse addiction or other specialized assessments;
- (7) Global Position System (GPS) monitoring for a specified period of time;
- (8) Community service for a specified number of hours;
- (8) Placement in a residential sanctions facility or residential treatment facility for a specified period of time; and
- (9) Travel restrictions.

(c) You remain subject to further action by the releasing authority. For example, the releasing authority may override the imposition of any of the sanctions in paragraph (b) of this section and issue a warrant or summons if it finds that you are a risk to the public safety or that you are not complying in good faith with the sanctions (see 28 CFR 2.85(a)(15)).

#### **§810.4 Community supervision: Global Position System monitoring.**

(a) In addition to being placed on Global Position System (GPS) monitoring as a condition of release (see 28 CFR 2.85(b); D.C. Code section 24-131(a)(3)), or as an administrative sanction, (see §810.3(b)), CSOSA may place you on GPS monitoring as a tool to assist with your supervision.

Circumstances under which a CSO may place you on GPS monitoring include, but are not limited to, the following events:

(1) CSS-issued directives to place offenders who fit a certain profile on GPS monitoring. Pursuant to intelligence received or deterrence efforts initiated by law enforcement, CSOSA may elect to place a group of offenders that fit a certain criminal behavioral pattern on GPS monitoring. Separately, and as a result of information that is already in the Agency's possession, CSOSA may issue directives to supervision staff to place offenders who meet certain characteristics on GPS monitoring. In all of the aforementioned instances, the decision to place a group of offenders on GPS monitoring ultimately rests with CSOSA.

(2) Individualized determinations to place offenders on GPS monitoring. CSOs make individualized determinations as to whether to place offenders on GPS monitoring. If an offender is engaged in behavior that puts the offender at a high risk for reoffending or for harm to the offender or others, the offender's CSO may elect to place that offender on GPS monitoring. In all of the aforementioned instances, the decision to place an offender on GPS monitoring ultimately lies with the CSO, although it is subject to review and approval by the CSO's supervisory chain of command.

(b) Unless the releasing authority specifies a different timeframe, CSOSA will place an offender on GPS monitoring for an initial period of thirty (30) days. An offender's CSO may extend the monitoring period for up to ninety (90) days. Extensions past ninety (90) days may be done in thirty (30) day increments and must be reviewed and approved by a Supervisory CSO (SCSO).



Dated: May 15, 2015.

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Diane Bradley,  
Assistant General Counsel.

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